

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

IN RE:	§	NO. 15-51396-cag
	§	
PRIMERA ENERGY, LLC	§	
	§	
DEBTOR	§	
	§	CHAPTER 11 PROCEEDING

**LIMITED RESPONSE AND OBJECTION REGARDING MOTION TO EXPEDITE
CONSIDERATION OF MOTION TO APPOINT A CHAPTER 11 TRUSTEE**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Primera Energy, LLC , debtor and debtor-in-possession (the "**Debtor**"), through its proposed undersigned counsel, files this limited response only to the Motion to Expedite Consideration of the Motion to Appoint Chapter 11 Trustee and would assert as follows:

1. Fred Patek, et al ("Patek") filed a Motion to Appoint a Chapter 11 Trustee. ("**Motion**") (Doc. 4).
2. Contemporaneously, Patek filed a motion for expedited consideration of his Motion. ("Doc. 5) and pursuant to certain emails between Patek's counsel, Ms. Lisa Elizondo and this counsel, are requested a hearing during the week of June 8-12, 2015.
3. Debtor will formally response to the merits of the Motion at a later date. This response is limited to the request for an expedited consideration on less than 20 days notice.

First Basis for Objection - Extraordinary Remedy

4. The Bankruptcy Code provides for the appointment of a Trustee by the Bankruptcy Court pursuant to 11 U.S.C. §1104. The Code provides that a Trustee may be appointed under three circumstances: (1) upon request of a party, for cause of fraud or gross mismanagement of the debtor's affairs by current management; (2) upon request of a party, without cause where appointment is in the interests of the creditors, equity holders, and others in the estate; and (3) where grounds exist to dismiss or convert the case, but the Court determines that a trustee is in the best interest of creditors and the estate.

5. However, “the standard for § 1104 appointment is very high” *In re Smart World Techs., Inc.*, 423 F.3d 166, 176(2d Cir. 2005); see also 7 Collier on Bankruptcy, P. 1104.02(209a) (noting that appointment of a trustee in a Chapter 11 case is an “extraordinary” remedy). Patek has the burden of showing by “clear and convincing evidence” that the appointment of a trustee is warranted. *In re Adelpia Communs Corp*, 336 B.R. 610, 656(Bankr. S.D. N.Y. 2006). In determining whether a Section 1104 appointment is warranted, or in the best interests of creditors, the bankruptcy court must bear in mind that the appointment of a trustee “may impose a substantial financial burden on a hard pressed debtor seeking relief under the Bankruptcy Code by incurring the expenditure of ‘substantial administrative expenses’ cause by further delay in the bankruptcy proceedings. *See, Midlantic Nat’l Bank v. Anchorage Boat Sales, Inc. (In re Anchorage Boat Sales, Inc)* 4 B.R. 635, 644 (Bankr. S.D.N.Y. 1980).

6. Given this is an “Extraordinary Remedy”, due consideration and time should be afforded to the Debtor and other creditors and parties in interest to determine whether such a motion should be granted.

Second Basis for Objection - Patek et al’s Claim should be determined by Arbitration

7. Patek, et al are investors in various oil and gas joint ventures. Upon information and belief, their complaint centers around (1) the projected cost of the wells that they invested in and the actual cost and (2) the difference between what they believed the well would produce and what is being produce.

8. Without admitting the validity of the these complaint, they are historical in nature and do not concern current operations.

9. More importantly, the Prospectus which governs the rights of all parties, including Patek, et al, requires that any claim arising out of the subscription agreement or the breach, termination, enforcement, interpretation or validity thereof, if not settled within 30 days, shall be determined by arbitration in San Antonio, Texas. (Paragraph 9 of Exhibit A attached.

10. Arbitration agreements are seriously favored in Texas. "In Texas, arbitration is generally a contractual proceeding by which the parties to a controversy, in order to obtain a speedy and inexpensive final disposition of the disputed matter, select arbitrators or judges of their own choice, and by consent, submit the controversy to these arbitrators for determination. *In re C.A.K.*, 155 S.W.3d 544, 559 (Tex. App-San Antonio, 2004, pet. denied.)

11. The state court proceeding should never have been held given the contractual agreement the parties had to arbitrate.

Third Basis for Objection - General Unsecured Creditors

12. There are a substantial amount of trade and operational creditors. Based on preliminary information there are several millions of dollars in creditor claims. One creditor has already filed a claim for over \$1,000,000. These creditors should have an opportunity to weigh in on this issue. Upon information and belief, the rights of the trade creditors was not before the state court; however, the ability to repay these creditors is foremost in the mind of this court. Thus, these creditors should be provided adequate notice to determine whether an appointment of a trustee is warranted.

Fourth Basis for Objection - Necessity of Debtor's Counsel to have proper time to prepare

13. Debtor's counsel only became recently employed. This counsel did not participate in any of the state court action and has no prior connection with the Debtor.

14. Counsel needs adequate time to prepare for such a hearing as well as time to prepare the schedules and perform the normal and customary tasks associated with a chapter 11 filing.

15. Counsel asserts that he would need at least 20 days to adequately prepare for any hearing for the appointment of a trustee. This time is necessary to review the state court pleadings and evidence; to prepare the necessary bankruptcy schedules and statement of affairs; and interview witnesses.

Fifth Basis for Objection - Interim remedies may be implemented short of the appointment of a Chapter 11 Trustee.

16. While Debtor denies that any such remedies that may be suggested below are necessary or required, there are intermediate remedies that could be implemented prior to a hearing on the merits.

17. Such remedies could include the any payment to Mr. Bryan Alfaro during this interim period.

Sixth Basis for Objection - Unavailability of Bryan Alfaro

18. Currently, Mr. Alfaro is out of the state and is expected to return on June 17, 2015. Debtor request that any hearing be held after that date.

WHEREFORE, the Debtor respectfully requests that the Court deny the request for an expedited setting and to schedule this sometime after June 17, 2015 when adequate notice can be give to all parties and for such other and further relief as may be just and equitable.

Respectfully submitted,

/s/Dean W. Greer

DEAN W. GREER
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State Bar No. 08414100
Attorney for Debtor

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. Notice was delivered to the parties listed below and those listed on the attached Exhibit A using the CM/ECF System or by First Class Mail, Postage Prepaid on the 5th day of June, 2015.

PRIMERA ENERGY, LLC
21022 GATHERING OAK #2101
SAN ANTONIO, TEXAS 78260
DEBTOR

U.S. TRUSTEE
P. O. BOX 1539
SAN ANTONIO, TEXAS 78295-1539
U.S. TRUSTEE

_____/s/ *Dean W. Greer*_____
DEAN W. GREER

Label Matrix for local noticing
0542-5
Case 15-51396-cag
Western District of Texas
San Antonio
Fri Jun 5 09:03:45 CDT 2015

ARK-LA-TEX Wireline Services
P. O. Box 677231
1200 East Campbell #108
Richardson, TX 75081-1963

ArkLaTex Wireline Services, LLC
c/o William R. Sudela
Crady, Jewett & McCulley, LLP
2727 Allen Parkway, Suite 1700
Houston, TX 77019-2125

Beck Bros, Inc.
P. O. Box 712
Beeville, TX 78104-0712

Brandon Barchus
Faulk Barchus
800 Bering Drive #400
Houston, Texas 77057-2131

CWFord Rentals
P. O. Box 3156
Kilgore, TX 75663-3156

Chem Rock Technologies
P. O. Box 81277
Lafayette, LA 70598-1277

Diamond Energy Services
406 S. Boulder Ave #708
Tulsa, OK 74103-3862

EVO Inc.
15720 Park Row #500
Houston, TX 77084-4961

Excalibur Rentals
P. O. Box 203047
Houston, TX 77216-3047

Primera Energy, LLC
21022 Gathering Oak #2101
San Antonio, TX 78260-3109

Allied Oil & Gas
P. O. Box 93999
Southlake, TX 76092-0119

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10th & Const. Ave. N.W.#5111
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Beta International, Inc.
P. O. Box 4436 msc 700
Houston, TX 77210-4436

CC American Oilfield LLC
P. O. Box 260012
Corpus Christi, TX 78426-0012

Certified Oil Field Rentals, I
P. O. Box 967
Cuero, TX 77954-0967

Crest Pumping Technologies
6500 West Freeway #601
Fort Worth, TX 76116-2181

Diversified Well Logging, LLC
711 West 10th Street
Reserve, LA 70084-6919

Eagle Oilfield Inspection Serv
P. O. Box 895
Broussard, LA 70518-0895

Express Energy Services
P. O. Box 843971
Dallas, TX 75284-3971

U.S. BANKRUPTCY COURT
615 E. HOUSTON STREET, ROOM 597
SAN ANTONIO, TX 78205-2055

Andrews Pump & Supply
P. O. Box 1378
Andrews, TX 79714-1378

BBVA Compass
18503 Blanco Road
San Antonio, TX 78258-4044

Black Gold Rental Tools
P. O. Box 9531
Corpus Christi, TX 78469-9531

CC Forbes LLC
P. O. Box 250
Alice, TX 78333-0250

Champions Contracting, LLC
20600 H and R Road
Houston, TX 77073-3002

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2929 Mossrock, Suite 117
San Antonio, TX 78230-5141

Dynasty Enterprises, Inc.
P. O. Box 128
Kenedy, TX 78119-0128

Elite Toilet Rentals
P. O. Box 3772
Victoria, TX 77903-3772

Gray Sales, Inc.
P. O. Box 188
Hebbronville, TX 78361-0188

EXHIBIT A

Guadalupe Valley Electric Coop
13849 US Hwy 87W
LaVernia, TX 78121-5848

Hanz Hydraulics, Inc.
6204 Fenske Lane
Needville, TX 77461-8843

Inland Environmental & Remediation
P. O. Box 1090
Columbus, TX 78934-1090

(p)INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATIONS
PO BOX 7346
PHILADELPHIA PA 19101-7346

K-3 Services
P. O. Box 2236
Alvin, TX 77512-2236

KDR Supply, Inc.
P. O. Box 10130
Liberty, TX 77575-7630

Karnes County National Bank
P. O. Box 98
Karnes City, TX 78118-0098

Key Energy Services
P. O. Box 4649
Houston, TX 77210-4649

Lone Star Industries
P. O. Box 188
Hebbronville, TX 78361-0188

MMZ Consulting
9207 Limestone Pass
Boerne, TX 78006-6549

MW Rentals & Service
4002 U.S. Hwy 59 North
Victoria, TX 77905-5501

Maverick Field Services
P. O. Box 262
La Grange, TX 78945-0262

McGuire Industries
2416 W. 42nd Street
Odessa, TX 79764-6309

Midstar Energy LP
1840 Snake River Road #E
Katy, TX 77449-7755

National Oilwell Varco LP
P. O. Box 203793
Dallas, TX 75320-3793

Nationwide Capital Funding
P. O. Box 260775
Corpus Christi, TX 78426-0775

Newpark Drilling Tools
21920 Merchant's Way
Katy, TX 77449-6834

Oil Patch Rental Services
P. O. Box 204667
Dallas, TX 75320-4667

P & A Supply
P. O. Box 4814
Victoria, TX 77903-4814

Platinum Pressure Pumping
2100 W. Loop S #1400
Houston, TX 77027-3525

Production Equipment Company
P. O. Box 2621
Corpus Christi, Texas 78403-2621

Quick Pipe
1825 Upland Drive
Houston, TX 77043-3003

Rathole Drilling, Inc.
P. O. Box 389
Alice, TX 78333-0389

Refinery Specialties
P. O. Box 577
Hempstead, TX 77445-0577

Steve Kent Trucking
P. O. Box 148
Lottie, LA 70756-0148

Trican Well Services
P. O. Box 677418
Dallas, TX 75267-7418

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U. S. Trustee
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San Antonio, Texas 78205-2055

Unit Texas Drilling, LLC
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Tulsa, OK 74136-5465

United States Trustee - SA12
US Trustee's Office
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PO Box 1539
San Antonio, TX 78295-1539

c/o David S. Gragg / Natalie F. Wilson
Langley & Banack, Inc.
745 E. Mulberry, Suite 900
San Antonio, TX 78212-3141

Dean William Greer
2929 Mossrock, Suite 117
San Antonio, TX 78230-5141

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Internal Revenue Service
P. O. Box 21126
Philadelphia, PA 19114

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d)Primera Energy, LLC
21022 Gathering Oak #2101
San Antonio, TX 78260-3109

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Bypassed recipients	1
Total	62